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ABSTRACT

News reports issued during the 60 days the Nebraska Legislature was in session between January 4, 1984, and April 9, 1984, and pertinent bills considered by the legislature during that period are the main sources used in this examination of the effort to resolve a conflict between the regulations of the Nebraska State Department of Education and the activities of a private school run by the Faith Baptist Church of Louisville, Nebraska. The regulations fought by supporters of the private school called for certification of teachers, reporting of pupil attendance, and state approval of the curriculum. The bill eventually passed by the legislature spelled out alternatives to meeting state standards, particularly in the areas of curriculum and certification. (PGD)

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Freedom for Religious Education and Regulation of Schools by the State

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Introduction

From the lineage of such twentieth century cases as Meyer, Pierce, Allen, and Yoder, the questions of parental rights and society's interests when centered upon the education of children have risen to litigation with some frequency. The crux of the issue has been focused upon parents who design and support schools that correspond closely to their religious beliefs, while ignoring statutes calling for state regulation of all schools. In some form or another, this issue has continued to be litigated. Cases centering upon the jurisdiction of state departments of education and/or the educational integrity of unregulated schools have come before appeals courts in the states of Nebraska, North Dakota, New York, Michigan, Maine and Massachusetts since 1980. Given the fact that a majority* of this nation's states do not require evidence of comparability from private to public schools, it is apparent that the dispute is nearly as widespread as it possibly could be.

In 1982 a research effort was designed to follow the controversy between a small church sponsored school in Louisville, Nebraska and the Nebraska Department of Education. It included attention to some of the comparative and historical aspects of church and state conflicts in educational endeavors.

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*The Florida State Department of Education surveyed the nation in 1980 on the question of teacher certification, and found that thirteen states required such certification in private and public schools; thirteen did not require certification in private schools, and in twenty-four states, certification for private school teachers was optional.

The Faith Baptist Church in Louisville, under the ministry of the Rev. Everett Sileven, has continued on an unwavering path, holding fast to three aspects of school operation that put it in conflict with the Nebraska Department of Education, as that agency attempts to enforce statutes and regulations. Those regulations can best be stated as positions of that church, which are in opposition to the S D of E.

1. The school must be free to select as teachers persons who meet the criteria for that particular school. Diplomas, degrees and certificates are simply not relevant to the teacher selection and employment process.

2. The school must be free to register students who may be selected to attend, and should have no obligation to report their attendance to any governmental authority.

3. The school must be free to select a curriculum that harmonizes with the religious beliefs of the church members, and should accept no obligation to submit or report that curriculum to the S D of E for approval.

"It is the position of the school that it operates under God's laws and thus is not subject to the laws of man or the State of Nebraska."[1]

Between 1982 and 1984 the stalemate between existing state statutes and strongly held religious beliefs fostered substantial activity in several areas of Nebraska society. Legislators were lobbied intensively and extensively. Congregation members were jailed for contempt of court after insisting that their children should attend that school even though it had been closed by court order, a consequence of the finding in Nebraska v. Faith Baptist, 301 N.W. 2nd 571, 1981, and upon the failure of appeals by the church members. Demonstrations of unity among fundamentalist Christians have involved sympathetic pastoral groups coming to Nebraska from many other states and the exodus from Nebraska of some congregational members as they took their families to states where statutes allow for the operation of their particular kind of school. During much of that time, too, the Rev. Mr. Sileven has been on national touring and fund raising trips while there has also been issued a Nebraska order for his arrest

for contempt of court. From time to time, these actions and events have been reported on national television news. The President of the United States, and many lesser political leaders, have noticed the controversy and called for an end to it. A special study commission, functioning in 1984 after appointment by Nebraska's Governor Kerrey, developed some recommendations for a legislative solution. There can be little doubt that a serious issue was joined as a small but determined group of citizens bore the brunt of the law as it was applied to their intractable position about the meaning of the First Amendment in regard religious freedom.

This paper is an examination of attempts to develop solutions to the conflict, attempted while the Nebraska unicameral legislature was in its 1984 session. The record given attention is from January 4, 1984 to April 9, 1984, the period of time while the legislature was convened for sixty days of activity. In the main, it is derived from two sources: 1) the news reports of that whole episode, in that same time frame; 2) the pertinent bills considered by the legislature.

The Controversy in the News

The Omaha World-Herald was selected as the single news source on the controversy, and starting with the January 4 edition, the papers were examined daily and every Faith Baptist Church related article was filed. Excluding all letters to the editor, the clipping file for the 94 calendar days contained 91 items related to the controversy in the Louisville church. Many of those were front page items in the state's major newspaper.

Supporters of the school began calling legislators early in the session, attempting to persuade them. Some of those calls were timed for late at night as the senators were urged to change the laws on teacher certification and obligatory reports on pupil attendance.

After the school had been ordered closed, seven families persisted in sending their children to the school and found themselves in contempt of court. The fathers were arrested and placed in the county jail on the contempt charge, refusing an invitation from the judge to purge themselves. Their wives and children moved to Missouri. After 44 days in jail, one man, Mr. Robinson, accepted the judge's invitation, answered the questions, and was released on January 7, 1984. The other six remained in jail. One of those, when asked why other church sponsored schools have been willing to meet the standards of the state, wrote, "Others are uneducated and have no convictions." In gaining his freedom, Robinson, the church member, agreed not to place his children in the Faith Baptist School. Several fundamentalist Christian pastors from over the nation were present in the county court room for Robinson's hearing and were very critical, as one stated, "I think there's some shame on the shoulders of the State of Nebraska for breaking a man."[2]

Names of persons and organizations began to emerge and the controversy mounted. Clarence Pendleton, Jr., chairman of the U.S. Commission on Civil Rights, came to Nebraska and visited with state officials, including Commissioner of Education, Joseph Lutjeharms. He also met with supporters of the Church, including Edward Rowe of the Church League of America, Wheaton, Illinois; Robert Woolsey of the Churches for Christian Liberty; Greg Dixon, of the Coalition of Unregistered Chruches.

At the conclusion of his meetings, and as he prepared to leave Nebraska, Pendleton stated that the issue was "purely a state matter," and tnat he hoped it could soon be resolved.[3]

Four automatic dialing machines were installed in the basement of the Faith Baptist Church in Louisville. Every 90 seconds, over a fourteen-hour period each day, random Omaha-area numbers were dialed and a tape made by one of the mothers was played. In it she asked for prayers to change the heart of

the judge who had imprisoned the fathers. The machines were installed in December, after the jailing of the men. Each telephone produced over 500 phone calls a day, and the tapes were changed periodically. Additionally, eighteen phones were installed to be utilized as a phone bank to raise money and support, nationally. People such as the Rev. Bill Adams of Mitchell, South Dakota, manned these phones in the basement of the Faith Baptist Church. This was meant to enhance the lobbying effort that was beginning in the state's capitol, Lincoln.[4]

Meanwhile, news was received that Sileven, still a fugitive under an arrest warrant for contempt of court, was appearing at a number of churches across the nation to build support for what he called a battle over religious freedom. Two months after his speaking tour began, Sileven arrived back in Louisville, but was not arrested as he departed quickly to appear on the ABC news show, "Nightline." In his appearance, Sileven criticized President Reagan for not coming to his aid and called for a boycott of several companies. Specifically, he identified two major insurance companies, on the premise that if they lost business, they would exert pressure on Nebraska's Governor Kerrey to end the conflict. That action inflamed the local Chambers of Commerce and businesses, which were named solely because they are big and located in Nebraska. Fundraising continued, as well, and when asked how much money the church had raised, he noted that it was at least $30,000 "because we've paid out that much in telephone bills."[5]

By mid-February, the six fathers of Faith Christian pupils were still in jail where they had been since November 23, and the legislature offered little hope for resolution of the problem. The judicial and legislative processes had already gobbled up thousands of 1984 hours, and volumes of rhetoric. Resolving the issue would allow the legislature time to tackle other important state problems, so there was pressure to lay it to rest. The Washington

lawyer for the fathers, Michael Farris, indicated that he would try to gain their release because the men felt they had the right of the Fifth Amendment---to not incriminate themselves. The local judge responded that the Fifth could not be invoked because "they are involved in a civil contempt, not a criminal contempt, court case." Farris said the prosecutors were playing "procedural games," while the judge said that Farris was "forum-shopping."[6] The seven year old case continued, and neither "side" showed much indication of yielding a position.

The U.S. Commission on Civil Rights received 50,000 letters asking for the investigation of the school and whether constitutional rights had been violated. The Commission declined to become involved. Greg Dixon, spokesman for the supporters and former secretary of the Moral Majority, expressed frustration with the Reagan Administration, which they had supported in the 1980 election. In terms of the 1984 re-election bid, he told his followers, "Stay home." Civil Rights Commission Chairman Pendleton recommended that the Legislature use the Spire Commission Report (a governor appointed group) as a vehicle to resolve the conflict. "The task force report is a sensible way out. The legislature ought to deal with the report."[7]

At the same time that the controversy was raging in the courts, the church, and the media, the 1984 Nebraska legislature was at work. Most of the senators embraced the idea that a solution should be developed, and they expected accommodations by both "sides" of the issue. That was one of the problems, the relative intransigence of the fundamentalist Christians. Believing that they had a commission from God to do things a certain way, it was very difficult for them to modify or negotiate any part of their position, for to do so would seem to violate the will of God. Although some might describe this as a very large question, the number of schoolchildren was always small. By some observers who tried to secure accurate estimates, it was concluded that in the

Faith Baptist School--and all others of philosophical similarity in the state--there were never as many as 250 students, total.

Legislative Bills

To set the stage for consideration fo the bills, it is pertinent to clarify the position of the Nebraska Department of Education. It is the position of the N D of E that it has had put upon it a general obligation to regulate the education of the school children in Nebraska, aimed at maximizing the benefits of that education. From that statutory and policy base, the N D of E exercises its power over many of the specifics of school operation, all with the intent to enhance quality. That centralized power, common among the states, is a force in building quality in schools, and in standardizing them. There are many problems in school deregulation from the vantage point of the state, although that was the desire of the church sponsored schools.

In an interview with William C. Ramsey, the president of the Nebraska State Board of Education, he stated that in the first quarter of 1984 he personally received sixty letters exhorting deregulation, and freeing the church sponsored schools fromt he N D of E. Although the letters came from all over the nation, they all bore "a postmark from Gary, Indiana." He surmised that was the public relations office for one of the religious associations that supported the Faith Baptist Chhurch, and that letters to influence political agencies were gathered and mailed from there. The position of the N D of E and its political sponsor, the State Board of Education, was clear as 1984 started.

On January 4, 1984, two bills were introduced as solutions to the tension of several years. LB 668 was offered to change the powers and duties of local public school boards, to change statutory provisions relating to private schools, and to repeal some existing statutes. Specifically, it required that alternative

school teachers should pass "a nationally standardized teacher competency test" in lieu of a certificate and that teacher load should be restricted to thirty pupils. Further, it called for students to be tested on a standardized achievement test, selected by the N D of E, after attending on the same calendar demanded of public schoolchildren. It contained diminished regulation, but still some regulation.

LB 771 identified Christian schools as "dramatically" different from other schools while pointing out that none of their operational cost was a tax burden. A two year moratorium on the prosecution of persons associated with those schools was proposed, while during that time the schools would be studied and an appraisal of their real quality would be made. The bill placed power for child placement in the hands of the district court judges if, during the two year study period, it was "determined that the health, safety, and welfare of the child" was at risk. It removed the N D of E from the scene but placed the legislative/judiciary arms of government in a supervisory role.

Not all legislators saw the religious advocates as having a real problem. For example, in another bill that was introduced, LB 891 declared that churches operating schools unapproved by the N D of E could lose part of their state tax exemption status. None of these three bills were enacted.

The Legislature's Education Committee sent forward its own bill, LB 928, which called for the compulsory attendance of all children age seven through sixteen in a "public, private, denominational or parochial day school which have met the requirements for legal operation..." An alternative to meeting state prescribed standards was spelled out, specifically relating to the state approval of curriculum and teacher certification. Exemptions were provided when N D of E regulation promised to "violate sincerely held religious beliefs of the parents or legal guardians." The statute recognized that in some

church sponsored schools the instructional leader functioned less as a teacher and more as a classroom monitor, dissociated from the learning process. At the same time, the statute specified that persons functioning as monitors in unapproved church sponsored schools would in no way be considered as teachers for any approved school in the state.

Some details of the movement of LB 928 through the unicameral are pertinent. On March 9th, first-round legislative approval was given to LB 928. It provided that teachers, or "instruction monitors," in church schools be required to take and pass teacher competency tests in place of certification requirements. The legislators voted down a version of the bill that would require testing of pupils. On March 23rd, after a five hour debate in the legislature, the bill was given second-round approval. Only one more of the required three votes in the Unicameral remained for passage. Amended, the bill required, again, testing of teachers; and the fundamentalist Christians again responded that testing of pupils was a preference.

Third-round approval, which meant passage, came for LB 928 on April 5th, just days before the end of the session. What remained was the governor's signature, but the governor had already indicated that he would support the bill. A note of clarification: the testing or evaluation of the teachers would not be used to prohibit employment nor would it automatically lead to state disapproval of any school whose teachers did not measure up. It would be up to the State Board of Education to draft rules and regulations. Disapproval would most likely come only if there were also a negative evaluation of school curriculum or poor student achievement test results. Children attending unapproved schools would be classed as truant and parents would be subject to the state's compulsory education laws. The vote was For, 28; Against, 16, with 25 required for passage.

Conclusion

The similarities between Bangor Baptist Church v. Maine D of E 576 F. Supp. 1299 (1983) and the Faith Baptist case in Nebraska are striking. They developed as full blown, non-reconcilable disputes during the latter 1970s. Each used the same curriculum materials, the Accelerated Christian Education program. Both used attorneys specializing in representing the interests of Christian schools and who were not local. In both cases, the dispute was cast in the same model, i.e., education is an inseparable part of the religious program of the church---a part of the ministry---and freedom of exercise is a Constitutionally protected right.

The difference was that in Maine, the S D of E Commissioner pursued the non-approved private schools as in violation of the compulsory education laws. For a pastor or school administrators to advise placement in a nonapproved school created a violation of the truancy laws, making those people liable for prosecution under that law. This position provided the contest that went to court.

In arriving at its conclusion, the Maine Supreme Court noted that although this threat had been leveled at pastors and the sponsoring groups, it had not been used---not once. Considering freedom of speech and religion as paramount, the court ruled against the state and provided declaratory and injunctive relief to the plaintiffs. The protection was narrowly limited, but provided that the clergy were free under the Constitution to persuade parents that it was their religious duty to place their children in church sponsored schools and that neither the persuasion nor placement could subject the parties to pursuit under the truancy laws.

There are many aspects, then, to any deviation from standards in those states that still try to maintain some kind of regulation over non-public

schools. Although the volume of litigation must surely decrease as that number of involved states continue to decrease, it seems likely that some new, now unforeseen questions will arise simply because it is not possible to predict what new kinds of theology or beliefs may arise, and for which the believers will seek Constitutional protection.

Epilogue

After the legislators passed LB 928, providing a way for religious sponsored schools to have greater latitude than previously, the Rev. Mr. Sileven returned to Nebraska. He faced five counts of contempt (as well as liens against property and future income from the IRS for several years of alleged underpayment of federal taxes). Facing the judge, he was given a sentence of an undetermined number of days, with cash bail set at $10,000, and was denied any writing materials.

Upon raising that cash bond, the pastor of the church, also principal of the school, was released. In a controversy that has seen a full measure of vindictiveness, acrimony and name calling from both "sides," a measure of good faith seems to be arising. The legislature passed and the governor signed a bill to accommodate many of the objections raised by the school sponsors; the school itself was not reopened as had been discussed, in a defiant act against the court's order; the Rev. Mr. Sileven has been moderate in his public comments. It seems that a social-educational problem which disrupted family life for several people has been argued through to a point of reluctant acceptance, with the judiciary, executive and legislative branches all playing a part.

The 200-250 students who are involved should find a school setting out of the arena of litigation in Fall, 1984.

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1. Meyer v. Nebraska, 262 U.S. 390.

2. Pierce v. Society of Sisters, 268 U.S. 510

3. Board of Education v. Allen, 392 U.S. 236

4. Wisconsin v. Yoder, 406 U.S. 205

5. Nebraska v. Faith Baptist, 301 N.W. 2d 571

6. Bangor Baptist v. Maine D of E, 576 F.Supp. 1299